

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

ERIC GARRY,

Plaintiff

v.

CALVIN JOHNSON, et al.,

Defendants

Case No.: 2:24-cv-01283-APG-DJA

**Order**

Plaintiff Eric Garry brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at High Desert State Prison. ECF No. 1. On July 25, 2024, the Magistrate Judge ordered Garry to file an application to proceed *in forma pauperis*, or pay the \$405 filing fee, by September 25, 2024. ECF No. 3. That deadline expired and Garry did not file an application to proceed *in forma pauperis*, pay the \$405 filing fee, move for an extension, or otherwise respond.

**I. Discussion**

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. *See Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, I must consider: (1)

1 the public's interest in expeditious resolution of litigation; (2) the court's need to manage its  
2 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of  
3 cases on their merits; and (5) the availability of less drastic alternatives. *See In re*  
4 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone*  
5 *v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

6 The first two factors, the public's interest in expeditiously resolving this litigation and the  
7 court's interest in managing its docket, weigh in favor of dismissal of Garry's claims. The third  
8 factor, risk of prejudice to defendants, also weighs in favor of dismissal because a presumption  
9 of injury arises from the occurrence of unreasonable delay in filing a pleading ordered by the  
10 court or prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The  
11 fourth factor—the public policy favoring disposition of cases on their merits—is greatly  
12 outweighed by the factors favoring dismissal.


13 The fifth factor requires me to consider whether less drastic alternatives can be used to  
14 correct the party's failure that brought about the court's need to consider dismissal. *See Yourish*  
15 *v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less drastic  
16 alternatives *before* the party has disobeyed a court order does not satisfy this factor); *accord*  
17 *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the persuasive  
18 force of” earlier Ninth Circuit cases that “implicitly accepted pursuit of less drastic alternatives  
19 prior to disobedience of the court's order as satisfying this element[,]” *i.e.*, like the “initial  
20 granting of leave to amend coupled with the warning of dismissal for failure to comply[,]” have  
21 been “eroded” by *Yourish*). Courts “need not exhaust every sanction short of dismissal before  
22 finally dismissing a case, but must explore possible and meaningful alternatives.” *Henderson v.*  
23 *Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed

1 until and unless Garry pays the \$405 filing fee or files an application to proceed *in forma*  
2 *pauperis*, the only alternative is to enter a second order setting another deadline. But the reality  
3 of repeating an ignored order is that it often only delays the inevitable and squanders the court's  
4 finite resources. The circumstances here do not indicate that this case will be an exception:  
5 there is no hint that Garry needs additional time or evidence that he did not receive the court's  
6 order. Setting another deadline is not a meaningful alternative given these circumstances. So the  
7 fifth factor favors dismissal.

## 8 **II. Conclusion**

9 Having thoroughly considered these dismissal factors, I find that they weigh in favor of  
10 dismissal. I therefore ordered that this action is dismissed without prejudice based on Garry's  
11 failure to file a fully complete application to proceed *in forma pauperis* or pay the full \$405  
12 filing fee in compliance with the Magistrate Judge's July 25, 2024, order. The Clerk of Court is  
13 directed to enter judgment accordingly and close this case. No other documents may be filed in  
14 this now-closed case. If Garry wishes to pursue his claims, he must file a complaint in a new  
15 case.

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17 Dated: October 15, 2024

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Chief U.S. District Judge